

to do with the reviewing of the performance of judges in office or it can be called something with a broader name.

Now, we have just given it an extremely broad function, the function of conducting studies and making recommendations regarding the administration of the judiciary. That is a very wide-scale, widespread function. If that conflicts with the function of some existing body, we have done that. That is already done. That is not a matter of the name.

The only issue before us is whether we name this body so that it looks like something that it does or whether we confuse the public and people who might want to be on this commission and make it look as though it has a narrow function when, in fact, at least potentially, it has a broad one.

So I think that to avoid confusing the public, it makes sense to give the commission a name that reflects its function, one of which will be to review the performance of judges in office.

CHAIRPERSON FREEMAN: Delegate Eichhorn.

DELEGATE EICHHORN: We are not making it responsible for studies on the administration of the court. We are not saying it shall conduct studies. We say that it may. If there is a need that is not addressed in another way, it may

choose to do that.

I do not see that as the reason for its existence or necessarily a major role. We are providing that it could happen if it would be useful.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I call the question.

[The question is called.]

CHAIRPERSON FREEMAN: All those in favor of closing off debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is one nay.]

CHAIRPERSON FREEMAN: Debate is now closed.

All those in favor of the Schrag Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a chorus of opposition.]

CHAIRPERSON FREEMAN: Can I have a division of the House on this?

All those in favor, please raise your hands.

[Hands are raised.]

All those who are opposed, please raise your hands.

[Hands are raised.]

Abstention.

[The count is 9 in favor, 11 opposed.]

All right, the Schrag Amendment is defeated.

Delegate Love, you have an amendment?

DELEGATE CORN: What was the vote?

CHAIRPERSON FREEMAN: Excuse me. Delegate Cooper, could you read the vote, please?

SECRETARY COOPER: It was 9 in favor, 11 against and 4 abstaining.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: I would like to make several -- amendments at this point. Their basic purpose is to simplify the section. What we have done in the previous section with the Nominating Committee was to say virtually nothing about how that committee operates.

In this particular section, with this committee, we have been very detailed of how it operates. I frankly think the operations of these committees should be left up to the legislature so what I am going to do is to make several proposals that considerably shorten the section and allow the legislature to deal with this. Let me make this --

DELEGATE SIMMONS: Point of order. This is not --

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: Why doesn't he lay them out and then speak to them the way he should?

CHAIRPERSON FREEMAN: That is a good point, Delegate Simmons.

DELEGATE LOVE: I would like to start on page 11. Page 11. I would like to start with line 2. "The Tenure Commission shall consist of five members." At that point I would like to insert the words, "Who shall serve for six years as provided by law."

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE LOVE: Wait -- well --

DELEGATE CORN: What is the point of that?

CHAIRPERSON FREEMAN: Excuse me, Delegate Love, I -- all right.

DELEGATE LOVE: Now I am going to suggest deleting the whole rest of that paragraph, "Such members shall serve for six terms except pursuant ....they shall begin their terms..." I think that is all legislative. I think the legislature could deal with that in transition --

DELEGATE COOPER: Point of order.

DELEGATE LOVE: -- so, therefore, I would like --



CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: The motion did not get a second.

CHAIRPERSON FREEMAN: I think it is a fuller motion. That is why I withdrew asking for it.

DELEGATE KAVENY: Would you clarify the time when seconds are in order?

CHAIRPERSON FREEMAN: Yes, I will.

Delegate Love, could you clarify what you are doing and at what point one amendment stops and the next amendment begins?

DELEGATE LOVE: Yes. I am going to continue with my first amendment at this point.

CHAIRPERSON FREEMAN: All right.

DELEGATE LOVE: I am also going to delete two, at the bottom of the page and three, on the next page.

VOICE: Tell us how you are doing that.

DELEGATE LOVE: Okay. What I would do is, I would start at page 11 at the top where it says, "The Tenure Commission shall consist of five members and shall serve for six years as provided by law" and then from there on, I would not do anything until the next page, line 8, where it says, "The state government shall furnish to the Tenure Commission."

All of this --

DELEGATE KAMENY: You are eliminating all of that.

DELEGATE LOVE: I am eliminating all of that.

DELEGATE KAMENY: The rest of that page.

DELEGATE LOVE: Yes.

DELEGATE KAMENY: All right.

CHAIRPERSON FREEMAN: Would you like to speak to your motion, Delegate Love?

DELEGATE LOVE: That is the first part. Let me go on with the second part. I might as well do it all at once.

CHAIRPERSON FREEMAN: No, I think it is much easier for the delegates if you do it one at a time.

DELEGATE LOVE: Okay, I will stop there.

VOICE: Second.

[There is a second.]

DELEGATE LOVE: All right. As I say, what I am basically doing here is, once the Tenure Commission -- the Tenure Commission has to be established by law any how. In the beginning it says, "There is established a state commission on judicial disabilities and tenures." So the legislature is going to establish it anyhow. So all I am saying after that is that the commission shall consist of five members, on which we have already agreed and they shall serve for six years, as

provided by law.

I think the rest of these things, all the stuff about how they will come on if they are already incumbents, should be dealt with by the legislation in terms of transition.

I also think the rules of the committee are, again, things that do not need to be in the constitution, particularly since we set up the other committee, the nominating committee and never said anything about that committee at all.

Now, what I have passed out to you is a proposal, which I will bring up later, which is a very brief proposal which briefly says something about how all commissions shall operate and I will move that at a later date. But at this point, I would just like to move to delete everything that I have suggested and just end with the sentence, "The Tenure Commission shall consist of five members who shall serve for six years as provided by law."

DELEGATE KAMENY: And you are deleting what?

DELEGATE LOVE: I am deleting all the rest of that page and I am deleting number three on the next page, all the way down to number four, which begins "The state government" and we should leave that in so we can make sure the commission can get their materials.

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: Delegate Love, I agree with you on most of your deletions. But with respect to their beginning their terms, upon the expiration of terms of the incumbent members of this commission, it seems to me that that does belong in the constitution, although not in this article.

I understand you saying that it would be proper, assuming we adopt your motion, for this language to be moved to the transition article in the constitution, right?

DELEGATE LOVE: Yes.

DELEGATE SCHRAG: And that the committee on the transition -- doing the transition article -- may take that and do it.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I understand that the delegate wants to propose several amendments. It is sometimes helpful to understand what he proposes to do with the following amendment so that people better understand the impact of their decision on this one with respect to the others.

Therefore, I would like to request a brief analysis of what you plan to do with the other sections that will guide me in terms of this section.

CHAIRPERSON FREEMAN: That is helpful, Delegate

Shelton.

Delegate Love.

DELEGATE LOVE: The only other section that I am actually going to work with is page 13 and that is down at the bottom, number two and it talks about vacancies and how vacancies shall be filled.

Again, my feeling is that that is something the legislature should deal with and that I do not think we need to do -- to deal with that in the Constitution, particularly since the Nominating Commission, the one which we already set up, actually mentioned nothing about any of these things so we have one which mentions all of these things and one that doesn't mention any of them.

CHAIRPERSON FREEMAN: Delegate Love, would you just try to describe what you are doing, rather than argue for it?

DELEGATE SHELTON: So all the other sections that follow after your removal, you have decided not to propose any other amendments.

DELEGATE LOVE: Yes, that is the only other thing I have.

SEVERAL VOICES: Point of information.

DELEGATE CORN: Point of information. Point of

information.

CHAIRPERSON FREEMAN: Yes, there are several points of information. Delegate Cooper.

DELEGATE COOPER: Yes. I would like to respond to the amendment and to Mr. Schrag's comments because the amendment clearly stated that all of this section should be stricken.

Now, if this amendment passes, there is no way we can take language from it or delete it and insert it in any other article of our constitution and I want to make that crystal clear.

CHAIRPERSON FREEMAN: I do not think that that is true, Delegate Cooper.

DELEGATE LOVE: That can be accepted as a friendly amendment.

DELEGATE COOPER: No, Ma'am, I know what I am talking about.

DELEGATE EICHHORN: The Transition Committee can handle that.

CHAIRPERSON FREEMAN: There is a whole committee which -- the Local Government Committee is going to be dealing with all transition matters and that is what this pertains to.

Delegate Eichhorn.

DELEGATE COOPER: Point of order.

CHAIRPERSON FREEMAN: Point of order. Delegate Cooper.

DELEGATE COOPER: You have taken my comments out of context. My comments were that Mr. Love's amendment strikes this entire section. We cannot take language from this section that was stricken and put it in any other article of the Constitution.

CHAIRPERSON FREEMAN: I agree that we cannot take language from this article but we can deal with the problem in other articles.

DELEGATE COOPER: I just want to make that crystal clear.

CHAIRPERSON FREEMAN: And that is the distinction that I am trying to make. We can deal with the problem of transition in a separate article. It is true that we cannot list the exact language to do that.

Delegate Eichhorn.

DELEGATE EICHORN: Delegate Love has said that he is trying to make amendments to bring this section into conformity with the committee's judicial nomination section. And that to do that, we must strike certain language, the language which says that "The Tenure Commission shall annually



from among its members the chairman -- "

CHAIRPERSON FREEMAN: Which line are you on, Delegate Eichhorn?

DELEGATE EICHHORN: That is page 12. I refer you to page 8 on the Judicial Nomination Commission. "The Judicial Nomination Commission shall choose annually from among its members the chairperson and such other officers as it deems necessary."

He also suggests that we should strike "Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy ..." et cetera.

I refer you to page 8 on the Judicial Nomination Commission, "In the event an elected seat becomes vacant, the Governor shall temporarily fill the seat by appointment until the next regularly-scheduled election is held."

DELEGATE LOVE: That was struck.

DELEGATE EICHHORN: Was it struck? Okay, I was not aware of that.

I did not draft this section. This section was drafted by Delegate Thomas and David Clarke but it does seem to me that before we make a lot of changes here, we ought to remember that this Commission is sitting more or less as a



personnel committee and I realize the Nominations Commission is, too but I do not know all of the arguments that Councilman Clarke and Harry had for inserting these provisions but I am concerned about the fact that maybe some provisions for process should be in the constitution and not left to the legislature.

CHAIRPERSON FREEMAN: Delegate Mason.

DELEGATE CHARLES MASON: I rise to oppose the Love Amendment. I believe that one of his basic reasons for presenting it was to avoid redundancy between this and what might be in some other article about the transition.

One of the functions of the Style and Drafting Committee is to deal with just such redundancies. I think this is necessary material to appear somewhere. I think we should leave it here. If it turns out to appear also somewhere else at the next reading, the Style and Drafting Committee will recommend necessary changes to avoid the duplication but I think that at this point we should just leave the language as it is rather than imposing any alterations.

CHAIRPERSON FREEMAN: Is there any further discussion of somebody who has not yet spoken?

All right, Delegate Schrag.

DELEGATE SCHRAG: I hate to take up the body's time but I am forced to do it based on Delegate Cooper's

remarks. Therefore, I have to move to restore -- to amend the amendment by restoring the transition materials -- that is, to restore from the foot of line five that says --

DELEGATE CORN: What page?

DELEGATE SCHRAG: Page 11, line five down to the end of that paragraph.

DELEGATE BLOUNT: Point of order.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: It seems to me that if we vote this down, this point would not be necessary.

DELEGATE SCHRAG: I am only making it for you to know in the event you vote it up.

CHAIRPERSON FREEMAN: If it is voted up, then it would be very necessary.

Continue. So you are saying that starting on line 5, is it? Line 5 or 6 --

DELEGATE SCHRAG: Line 5, beginning with the "Except" word "Accept." Restore that, through the end of the paragraph.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

[There is a second.]

CHAIRPERSON FREEMAN: Discussion. Delegate Kameny --excuse me. Delegate Corn, do you have a point of

information?

DELEGATE CORN: Yes, I have a point of information. I seem to be missing the thrust of Delegate Love's amendment.

If Delegate Love's amendment is voted down, then all of that language is automatically retained, isn't it?

CHAIRPERSON FREEMAN: That is correct but if the amendment is voted up, then the language will be deleted and it must be retained in the Constitution.

Delegate Kameny.

DELEGATE KAMENY: It seems to me that through Delegate Cooper's remarks which were not quite apropos and Delegate Schrag's response, which was unnecessary, we are creating a non-existent situation.

The committee dealing with transition has not yet reported. One assumes they are a responsible group of delegates who are aware of what is going on in this convention and that they will shoulder their responsibilities now that they are listening and have heard what is going on and that we have to make a formal motion.

I am not sure that I am in order because of the business of amendments to amendments to amendments. I hope that I am. But if I am not, in that case, I would hope that Delegate Schrag's amendment would be amended to refer this to

the committee that --

DELEGATE SCHRAG: Delegate Kameny, you are out of order.

CHAIRPERSON FREEMAN: Delegate Kameny, you are out of order. There is an amendment to an amendment right now on the Floor and that is an amendment to the motion.

DELEGATE KAMENY: That is why I raised the question.

CHAIRPERSON FREEMAN: Oh, I thought you were referring to Delegate Schrag's amendment being out of order.

DELEGATE KAMENY: Then in that case I would move against Delegate Schrag's motion with the understanding that the responsible committee on transition will shoulder their responsibility. I do not think that we can deal with it at all at this point.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: Madam Chair, I would like to speak against the Schrag amendment. The Legislative Committee just said, "We will have a new body called something-or other" and at no point have they said what is going to happen to the old body. Throughout the Constitution there is going to be a problem of what happens to the old body.

I think it fills the Constitution up to be

constantly worried about what happens to old bodies because as soon as that old body is taken care of, after it has sat there for 100 years, it is meaningless.

Therefore, I do not think it belongs here and I think it is perfectly clear that the transition of the legislature itself will take into account the present system and will try as much as possible to keep those people in.

DELEGATE KAMENY: That is what I am talking about.

CHAIRPERSON FREEMAN: Delegate Kameny, you are out of order. Please.

DELEGATE LOVE: I feel that the section is -- is -- well, that it really should not be anywhere in the transition, that we cannot -- every time we change something, and we may certainly change it in the Constitution -- tell what is going to happen to the old body. Constitutions just do not do that. So I would urge opposition to the Schrag Amendment.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: This old body calls the question.

[Laughter.]

DELEGATE COOPER: Second.

[The question is called and seconded.]

CHAIRPERSON FREEMAN: All those who are in favor of closing off debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is one nay. Debate is closed.]

CHAIRPERSON FREEMAN: Debate is closed.

Excuse me, Delegates, we are missing a quorum. How many, Delegate Cooper, do we have present in the room?

[Delegates return to the room.]

CHAIRPERSON FREEMAN: We have a quorum in the room and the question was called. Debate is now closed. We are now voting on the Schrag Amendment to the Love Amendment.

All those in favor of the Schrag -- Delegate Robinson.

DELEGATE ROBINSON: Could it be repeated, please?

CHAIRPERSON FREEMAN: Yes. Delegate Cooper, could you -- as I understand it, Delegate Love's Amendment was to delete starting on page 11, line 3. He would complete line three, "Five members who shall serve for six years as provided by law" and from that point on, delete everything from "Selected" through the end of that page on to the beginning of part four on page 12.

The Schrag Amendment to the Love Amendment was to restore, starting from midway on line 5, "Except," on to the bottom of that section beginning at Section 2, to restore that.

All those who are in favor of the Schrag Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a chorus of noes and nays.]

Abstention.

[There is no abstention.]

The Schrag Amendment is defeated. Now, we continue discussion on the Love Amendment.

DELEGATE LOVE: Madam Chair.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: I would just like -- if there is some question about this, to move to divide the question by paragraphs so that at least people have specific sections if they are that upset about it.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second?

[Side conference.] All right, the motion to divide the question is not debateable. We do have to agree that we want to divide the question. All those who are in



favor -- Delegate Garner.

DELEGATE GARNER: Excuse me for interrupting.

If we adopt the motion to divide, has the requirement for two for and two against been met since, while the motion has not been divided, we did have two for and two against?

DELEGATE CORN: The motion to divide is non-debateable.

DELEGATE GARNER: It is a question of procedure, Madam Chairman.

If we vote to divide, have the requirements of two for and two against been met on all separate issues?

[Side conference.]

CHAIRPERSON FREEMAN: I would say, Delegate Garner, that is a novel question. I would say that probably not. We would have to continue to discuss.

All right, those who are in favor of dividing the question, please say aye.

[There is a chorus of ayes.]

Those who are opposed.

[There is a louder chorus of opposition.]

Abstention.

[There is no abstention. Motion loses.]



CHAIRPERSON FREEMAN: All right, the motion to divide is defeated.

Delegate Eichhorn.

DELEGATE EICHORN: I call the question on the motion.

DELEGATE BLOUNT: Second.

[Question on the motion is called and seconded.]

CHAIRPERSON FREEMAN: All those in favor of calling off debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There are a few nays.]

CHAIRPERSON FREEMAN: All right, we are now voting on the Love Amendment. All those who are in favor of the Love Amendment, please say aye.

[There is a chorus of ayes.]

CHAIRPERSON FREEMAN: All those opposed.

[There is a louder chorus of nays.]

Abstention.

[There is no abstention. Motion loses.]

CHAIRPERSON FREEMAN: The Love Amendment is defeated.

Is there any more discussion on section 3.16?

Delegate Eichhorn.

DELEGATE EICHORN: Call the question.

[The question is called.]

CHAIRPERSON FREEMAN: Is there a second?

[There are several seconds.]

CHAIRPERSON FREEMAN: All those in favor of closing off debate on section 3.16, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is no opposition. Motion carries unanimously.]

CHAIRPERSON FREEMAN: We are now voting on Section 3.16. All those in favor of adopting Section 3.16, please say aye.

[There is a chorus of ayes.]

All those opposed.

[Delegate Corn is opposed.]

Abstentions?

[There is no abstention. Motion carries.]

CHAIRPERSON FREEMAN: Section 3.16 is adopted.

Delegate Blount.

DELEGATE BLOUNT: I would just like to thank the body for moving on that.

Section 3.17 I would like to move the adoption of; Removal, suspension and involuntary retirement of judges.

[The motion is made. There are several seconds.]

CHAIRPERSON FREEMAN: Is there discussion on the motion?

DELEGATE BLOUNT: I would like to just read the Counsel's comments on this section.

CHAIRPERSON FREEMAN: Okay.

DELEGATE BLOUNT: "Due to time constraints, detailed analysis of these sections have not been accomplished" in effect, what he is saying is -- did we get the other information on that?

[Reply inaudible.]

[Delegate Kameny and Delegate Corn have their hands up.] DELEGATE CORN: I would like to just ask a question on that.

CHAIRPERSON FREEMAN: All right, Delegate Kameny, then Delegate Corn.

DELEGATE KAMENY: I just want to raise a technical point. I assume that several instances in<sup>which</sup> the State Court of Appeals in here, you mean the Supreme Court? Could that be formally entered in whatever manner is appropriate?

CHAIRPERSON FREEMAN: Is there any further discussion? Delegate Corn.

DELEGATE CORN: Well, it seems to me that there are a lot of things in here that should be looked at. First of all, on page 16 from lines 4 through 9, that is awfully subjective. It is very strong language to say -- it is appropriate to say a judge should be removed for misconduct in office but who is to determine what is misconduct in office?

For instance, if the judge goes to a party and has two drinks too many? Is that misconduct in office? Is in office considered when he or she is sitting on the Bench only? Or during the entire time?

DELEGATE BLOUNT: Point of order. Point of order.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: The Delegate has not proposed any amendment.

CHAIRPERSON FREEMAN: She does not have to. She can debate the motion that is on the floor.

Delegate Corn.

DELEGATE CORN: I also have some other points I should like to raise. I think that there are things here that are not clear. Does misconduct in office mean while he or she sits on the Bench only? Or does it mean while he or she is a judge? What is meant by that?

What is meant by failure to perform judicial

duties? What is meant by, for instance, "conduct which is prejudicial to the administration of justice"? Which brings a judicial office into this dispute.

If, for instance, the judge is, let's say, drunk at a couple of parties over six months, does that bring the judicial office into disrepute? What is meant by that?

I think that there is a lot of subjectivity open to things. Also, on page 17, it is very curious that you all voted down a court of appeals or an appellate court because you have it right here in number two, line one.

"The Tenure Commission files in the State Court of Appeals."

DELEGATE BRUNING: Point of information -- point of information to the Delegate.

CHAIRPERSON FREEMAN: Delegate Bruning.

DELEGATE BRUNING: I have sat here a long time and listened to the prefatory remarks by Delegate Kameny and if Ms. Corn had also, she would have heard the question about that language and Chairperson Blount's response that that was an error that would be corrected. Thank you.

DELEGATE CORN: And the error is what?

CHAIRPERSON FREEMAN: Delegate Corn, you are not recognized. Delegate Blount, would you like to speak to your

motion?

DELEGATE BLOUNT: I would just like to support it and state that a lot of research has gone into to this 3.17 and based on that, I would urge the delegates to vote in support of it.

CHAIRPERSON FREEMAN: Is there any further discussion of 3.17? Delegate Robinson.

DELEGATE ROBINSON: Madam Chair, I just have one question. The word that is substituted for "appeals" is what? What is the language there?

CHAIRPERSON FREEMAN: Which page are you referring to, Delegate Robinson?

DELEGATE ROBINSON: Page 17, number two.

DELEGATE CORN: Supreme Court.

DELEGATE BLOUNT: Supreme Court.

DELEGATE KAMENY: That appears in several places in the statute.

CHAIRPERSON FREEMAN: Delegate Blount has already spoken to that and that is going to be --

DELEGATE CORN: I should like to make an amendment, please.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: If it is appropriate, I should

like to call the question.

[The question is called. There are several seconds.

DELEGATE COOPER: Point of order.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Ms. Corn had the Floor. She has spoken for two and a half minutes of her time. She was interrupted on a point of information. You went on to another speaker when she still had the floor and you had recognized her.

CHAIRPERSON FREEMAN: Thank you, Delegate Cooper. I agree with you.

DELEGATE CORN: Thank you.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: Yes. On page 16 I would like, at the end of line 3, following language and adding --

DELEGATE GARNER: Point of order.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: The Delegate has already spoken. -- wished to make a motion -- initiation -- defer debate she may continue to speak against the motion but she may not now make a motion. It is out of Parliamentary procedure to speak on a matter and at the end of that time make a motion.

CHAIRPERSON FREEMAN: That is correct, Delegate

Garner.

Delegate Corn, do you have any more comments on the motion that is now before us?

DELEGATE CORN: No, I wanted to make a motion. I want to make an amendment.

CHAIRPERSON FREEMAN: Delegate Garner is correct. You cannot speak and then make a motion.

Delegate Kameny.

DELEGATE CORN: Where does that say that?

DELEGATE KAMENY: [Overridden, inaudible.]

CHAIRPERSON FREEMAN: That, Delegate Corn, is in Roberts Rules.

Delegate Kameny.

DELEGATE KAMENY: On page 19, line 4, I must apologize for not having been here yesterday. Has the --

DELEGATE COOPER: Madam Chair --

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Madam Chair, has the question not been called?

CHAIRPERSON FREEMAN: That is correct. Thank you, Delegate Cooper. All right, all those who are in favor --

DELEGATE KAMENY: Am I incorrect in my --

CHAIRPERSON FREEMAN: You are not recognized,



Delegate Kameny. The body can note that you had a question on page 19.

Delegate Rothschild.

DELEGATE ROTHSCCHILD: Delegate Blount spoke to the fact that a lot of research has been done and --

SPEAKER: The question has been called.

CHAIRPERSON FREEMAN: Delegate Rothschild, what is your point of order?

DELEGATE ROTHSCCHILD: We need to operate on that --

[Side conversations.]

CHAIRPERSON FREEMAN: I can't hear you.

VOICE: That's not a point of order.

DELEGATE ROTHSCCHILD: Information.

CHAIRPERSON FREEMAN: [Rapping gavel.] I can't hear you. Do you have a point of order?

DELEGATE ROTHSCCHILD: No, point of information.

CHAIRPERSON FREEMAN: Point of information?

DELEGATE ROTHSCCHILD: Yes. I would like to know exactly -- I mean, Delegate Corn raised some doubts. I would like to just hear what some of her research had turned up regarding, you know, the points.

CHAIRPERSON FREEMAN: You are out of order, Delegate Rothschild.

DELEGATE CORN: What I have to say is important.

CHAIRPERSON FREEMAN: I would point out to the Delegates that if they want to continue to debate 3.17, you can vote down but right now we have a question call on the floor. All those who are in favor -- Delegate Robinson.

DELEGATE ROBINSON: I question that we have a quorum for that.

CHAIRPERSON FREEMAN: Delegate Cooper, do we have a quorum?

[A count is made.]

SECRETARY COOPER: No, there are 21 Delegates present, no, 20 Delegates present.

DELEGATE BLOUNT: Madam Chairman, I would like to point out an important point that has been brought to my attention.

CHAIRPERSON FREEMAN: I would like to try to find, I guess, two more Delegates.

[Brief off the record to locate Delegates.]

DELEGATE LOVE: We have a quorum. Will somebody lock the doors, please?

CHAIRPERSON FREEMAN: Thank you, we have a quorum.

Delegate Garner, your motion now is off the floor as we did not have a quorum. But I would also ask you to not

move that question again. I understand there is a perfecting amendment that the Judiciary Committee would like to make and I do understand there are other delegates who would like to make amendments.

Delegate Blount.

DELEGATE BLOUNT: It was pointed out to me that --

DELEGATE COOPER: Point of order.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Yes. For lack of a quorum, Delegate Garner's motion did die. However, the motion to adopt 3.17 died right along with it.

DELEGATE LOVE: No, no, Madam Chair, point of order.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE COOPER: So there is no motion on the floor.

DELEGATE LOVE: We can conduct business until a quorum count is made, even if we do not have a quorum. You do not have to have a quorum to conduct business unless somebody calls for the quorum. If nobody calls for the quorum, you are operating --

CHAIRPERSON FREEMAN: There was a quorum call.

DELEGATE CORN: There was a call for quorum.

DELEGATE LOVE: But the quorum call came after the motion to close debate was made.

DELEGATE CORN: So what? It could come at any time.

DELEGATE LOVE: So the motion to close debate is in order.

DELEGATE COOPER: But it died for lack of a quorum.

DELEGATE CORN: Point of order, Madam Chair. Point of order, Madam Chair. Point of order, Madam Chair.

DELEGATE LOVE: But now we have a quorum.

DELEGATE BLOUNT: Madam Chair --

DELEGATE LOVE: Would the Chair rule on the point of order made by Delegate Cooper?

CHAIRPERSON FREEMAN: Yes. My ruling is that the call for the question died for lack of a quorum.

DELEGATE GARNER: Delegate Cooper also said that 3.17 was also off the floor. Is that also correct?

DELEGATE CORN: Wait, that --

[Several persons: Sssshhhhh.]

DELEGATE EICHHORN: Point of personal privilege.

DELEGATE GARNER: Can I get a ruling from the Chair on that?

DELEGATE EICHORN: I was present when the motion was made to adopt 3.17. I subsequently left the room. That was five to seven minutes ago. I don't think that whether there was a quorum one minute ago is relevant to that motion.

DELEGATE COOPER: All motions on the floor die.

DELEGATE GARNER: Madam Chair, would you please rule one way or the other and then we can move, based on that position.

DELEGATE BLOUNT: If the body would indulge, Madam Chairman.

DELEGATE GARNER: Point of order, the Chair should rule quickly.

CHAIRPERSON FREEMAN: The Chair is trying very hard to make a ruling but I am going to rule -- and this may not be the correct ruling from here on in but for this purpose, I will ask Delegate Blount to please reintroduce 3.17.

DELEGATE BLOUNT: I was just going to say that if the body would allow me to make this technical point, I think we could move ahead.

CHAIRPERSON FREEMAN: Delegate Blount, would you please move for the body to adopt 3.17?

DELEGATE BLOUNT: I move the adoption of Section 3.17.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second?

[There is a second.]

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: With the amendments.

DELEGATE CORN: What amendments? I don't remember any.

DELEGATE KAVENY: All the amendments died, too, if they --

DELEGATE COOPER: They died.

DELEGATE BLOUNT: It was the technical change that I wanted to make.

DELEGATE CORN: There were no amendments.

DELEGATE BLOUNT: Okay, the technical change is that we have reduced the commission to five members and on line four of page 19 you have the vote of five members, which is the total unanimous. So we want to make that four.

VOICE: Is that where it says five?

DELEGATE BLOUNT: Yes, where it says five, change that to four. If there are no objections.

DELEGATE COOPER: Point of information --

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Are these substantive changes

that are being made? Or are these clerical changes?

DELEGATE BLOUNT: It is a technical change.

DELEGATE COOPER: Here?

DELEGATE BLOUNT: Clerical changes. Because there are only five members and the tenth was so that you would have a unanimous decision -- as I understand it.

DELEGATE COOPER: Thank you.

CHAIRPERSON FREEMAN: Delegate Blount.

Do you have other changes?

[No response.]

CHAIRPERSON FREEMAN: Delegate Moore.

DELEGATE BRIAN MOORE: Point of information. It was my understanding, Delegate Blount, that the number was seven. Wasn't the number seven for the Tenure Commission?

DELEGATE BLOUNT: It was reduced. It was reduced to five. And now we say we are changing it to four.

DELEGATE BRIAN MOORE: So now it is being reduced from five to four?

DELEGATE BLOUNT: That is a clerical change.

CHAIRPERSON FREEMAN: [Rapping gavel.] Delegates -- Delegates, I am going to do two things.

I am going to call for a five-minute recess because the Chair needs a cigarette and I am also having a very

hard time following what is going on.

DELEGATE BLOUNT: I just moved the amendment,  
Madam Chairman.

CHAIRPERSON FREEMAN: I would like for the  
Judiciary Committee to please consolidate all of its technical  
changes in the five-minute break and I would also beg of the  
delegates to please not leave.

Five-minute recess.

[Brief recess.]

CHAIRPERSON FREEMAN: The meeting is now recon-  
vened. I am calling for a quorum. [Brief off record to  
structure quorum and bring Delegates onto Floor.]

We now have a quorum. May we have quiet in the  
room.

Delegate Schrag, Delegate Love, Delegate Kameny,  
Delegate Paramore, the meeting is reconvened.

Delegate Blount, could you please give to the  
body the technical change that you have?

DELEGATE BLOUNT: The technical change is on line  
4, of page 19 and the word "five" should be changed to "four."

CHAIRPERSON FREEMAN: I am sorry, Delegate Blount,  
could you try that one more time?

DELEGATE BLOUNT: On page 19, line 4, change the



word "five" to "four."

DELEGATE COOPER: Madam Chair --

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: I am still not clear. If these are technical changes or amendments, as Mr. Blount is making it.

DELEGATE EICHHORN: These should be treated as errors.

CHAIRPERSON FREEMAN: These are typographical errors. I think --

DELEGATE BLOUNT: You see, the reason is that there are only five members on the commission, Delegate Cooper, and it was not intended that all five would have a unanimous vote in order to remove a judge or suspend a judge.

CHAIRPERSON FREEMAN: The point is, Delegate Blount, if these are typographical errors, then those can be corrected without --

DELEGATE COOPER: Point of information.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: As Delegate Moore pointed out, Delegate Brian Moore, a member of that committee, he was unclear and he thought that part should have been seven.

Now, I think that there might be further confusion out there as to whether these are in fact, numerical --

DELEGATE BLOUNT: I move this as amended.

DELEGATE LOVE: Second.

[The motion is made and seconded.]

DELEGATE COOPER: I have not finished my sentence.

CHAIRPERSON FREEMAN: Delegate Cooper, there is now an amendment on the floor.

DELEGATE COOPER: Madam Chair, I have the floor on a point of information. That motion is out of order until I am complete.

VOICE: Point of order.

CHAIRPERSON FREEMAN: Delegate Cooper, what is your point of order now?

DELEGATE COOPER: My point of information was stated. Thank you.

CHAIRPERSON FREEMAN: Thank you.

DELEGATE BLOUNT: I move the adoption, as previously stated and I move the amendment.

CHAIRPERSON FREEMAN: Is there a second to that?

[There are several seconds.] [Moved and seconded.]

CHAIRPERSON FREEMAN: It has been moved and seconded that on line 4 on page 19 the word "five" be changed to "four." Is there any discussion on that?

Delegate Corn.

DELEGATE CORN: I would speak in favor of keeping the word "five." That means five out of five have to concur.

That means, given the make-up of the Tenure Commission, the Governor is going to have to put on the pressure on every single one of them to get rid of a judge. And therefore, I would keep five in. Let the people decide -- if the rules are four to one, then it will still be up to the people in the end. Let the people decide.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: I would like to move the question, if nobody else wishes to speak.

[The question is called. There is a second.]

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Yes. I, too, would like to speak against the amendment. I think that, you know, accountability is important -- the important thing here and I think that once a person is on that tenure commission by way of appointment, I think it should be very difficult to remove that person from the tenure commission.

DELEGATE KAMENY: It is not from the tenure commission.

DELEGATE CORN: We are talking about removing the judges.

CHAIRPERSON FREEMAN: Delegate Kameny, you are out of order. And so are you, Delegate Corn.

Delegate Eichhorn.

DELEGATE EICHHORN: I would like to speak to the amendment to answer Mr. Cooper's concern. The present tenure commission has seven members, of whom five must vote to suspend a judge. The vote here, which is five, was an error. The committee reduced the number of the Tenure Commission to five and did not correctly type this with the number four which is equivalent. Four out of five is comparable to five out of seven. It has to do with suspending a judge, not a member of the Tenure Commission.

Is there any further debate on this?

All right. All those who are in favor of adopting the Blount Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There are two nays.]

Abstentions.

[No abstention. Motion adopted.]

The Blount Amendment is adopted.

Do you have further changes, Delegate Blount?

DELEGATE CORN: Wait --

CHAIRPERSON FREEMAN: Delegate Corn, you had an amendment?

DELEGATE CORN: I had an amendment on page 16, lines 8 and 9. I would like a period placed after the word "justice" and the words "or which brings the judicial office into disrepute" dropped.

DELEGATE KAMENY: Second.

[Motion made and seconded.]

CHAIRPERSON FREEMAN: Is there discussion on that amendment?

VOICE: What page is that?

CHAIRPERSON FREEMAN: This is page 16 on line 8 --

DELEGATE CORN: And 9.

CHAIRPERSON FREEMAN: I can repeat it, Delegate Corn.

Appearing after the word "justice." And delete the rest of line 8 and line 9. Is there a discussion on that amendment?

DELEGATE CORN: May I speak to my motion?

CHAIRPERSON FREEMAN: Yes, you may, Delegate Corn.

DELEGATE CORN: The question that is raised here --

CHAIRPERSON FREEMAN: Delegate Jordan, could you please sit down? Delegate Love, could you please sit down?

DELEGATE CORN: The question that is raised here and why I want this language deleted is, it is a matter of interpretation as to what brings judicial office into disrepute.

For instance, if it were found out that a judge had fathered an illegitimate child, would that bring the judicial office into disrepute? If it were found out that a judge were gay, would that, by some peoples' interpretation, bring judicial office into disrepute?

If it were found out, for instance, that a judge had a lover or a mistress, would that bring the judicial office into disrepute?

Different people would answer you different ways.

I do not want this subject [left] to the whim or the fancy of the people on the Tenure Commission. I would want it clear that the judge should be judged only for his or her actions while he or she sits on the Bench and passes rulings.

His or her personal and private life should have no bearing whatsoever on his or her -- on judgment passed on the judge as to whether or not he or she should continue to sit on the Bench.

The judgment to retain a judge should be based solely and unequivocally upon his or her actions on the Bench

only. I hope that you will sustain me.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: Thank you very much, Madam President. I rise to urge support for this amendment.

First, the valid criteria -- the valid concerns -- are expressed in the first half of the language "Any other conduct which is prejudicial to the administration of justice."

That is really what needs to be considered with respect to the unseating of a judge.

The second part, as Delegate Corn has rightly brought out, brings in a lot of collateral factors which, if allowed to by the retention of this language, will often intervene where they ought not.

There has been a trend, in fact, in cases, for example, in some states where there is a phrase -- I object to the phrase in itself but it illustrates the point nonetheless, where a people may be removed from office for conviction -- actual conviction of a crime of moral turpitude -- whatever that means. And the decisions have been that even upon conviction of such a crime, only if the criminal activity related directly to the duties of office, could that stand and otherwise, it could not.

So the trend is, in other words, keep the conduct



which provides the basis for disqualification relevant to the office and not just in general to some people's standards of unpopularity.

In other words, people who because of their lives or attitudes or opinions or whatever are unpopular could be unseated by the second half of this and they should not be.

The first part I repeat, in conclusion, gives what is needed. The second part is unnecessary and can be profoundly harmful. I urge enactment of the motion. I urge that we support the motion. Thank you.

CHAIRPERSON FREEMAN: Is there any further discussion on this amendment?

All those who are in favor of the amendment, please say aye.

[There is a chorus of ayes.]

All those opposed?

[There are two persons opposed.]

Abstention?

[There is no abstention. Amendment adopted.]

The amendment is adopted.

Is there any further discussion? Delegate Garner.

DELEGATE GARNER: I call the question.



[The question is called.]

CHAIRPERSON FREEMAN: Is there a second?

Is there a second?

[There is a second.]

CHAIRPERSON FREEMAN: The question has been called on Section 3.17. All those in favor of closing off debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition. Carries unanimously.]

CHAIRPERSON FREEMAN: Debate is now closed on 3.17. All those in favor of adopting 3.17, please say aye.

[There is a chorus of ayes.]

All those opposed?

[There is no opposition.]

Abstention.

[No abstention. Carried unanimously.]

CHAIRPERSON FREEMAN: 3.17 is adopted.

Delegate Blount.

DELEGATE THOMAS: Madam Chairman, I am substituting for Delegate Blount and I would like to move 3.18, Administration.

DELEGATE LOVE: Second.

[The motion is made and seconded.]

DELEGATE CORN: Point of information.

CHAIRPERSON FREEMAN: All right, Section 3.18 has been moved and seconded.

Delegate Corn.

DELEGATE CORN: Point of information. Given the language adopted a little bit earlier, the Eichhorn language, of what we allow the Tenure Commission to do, that it may conduct studies and make recommendations regarding administration of the courts, I would like that explained in light of the sentence beginning on page 20, line 4 through 8, "The Chief Justice shall appoint an administrative director to serve at the pleasure of the court and to supervise the administrative operations of the judicial system."

CHAIRPERSON FREEMAN: Would the Judiciary Committee please respond?

DELEGATE EICHHORN: The language we adopted for the Tenure Commission is that the Tenure Commission may study the administration of the court and make recommendations.

This is the day-to-day administration of the court. The Tenure Commission is not going to develop personnel procedures for the hiring and firing of staff. The Tenure Commission is not going to assign judges. The Tenure

Commission is not going to determine the day-to-day operations of the court. Someone must do that and --

DELEGATE CORN: Okay, fine.

DELEGATE EICHHORN: -- this section addresses the day-to-day operation.

DELEGATE CORN: Fine. Thank you.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I am concerned with a point of information question. Will the Chief Justice have the power to call into service retired judges?

CHAIRPERSON FREEMAN: Will someone from the Judiciary Committee please respond to Delegate Shelton?

DELEGATE EICHHORN: That is addressed in an earlier section of this act. Of the Supreme Court, yes.

DELEGATE SHELTON: All right, the question is, is there some consideration given to eliminating the section on the administrative director? I would like to hear the arguments that the committee may have developed in establishing the administrative director.

CHAIRPERSON FREEMAN: Will the Judiciary Committee respond to the question?

DELEGATE BLOUNT: That was considering some of the places where the Clerk was administrative and we felt that

it would be useful in the Constitution.

DELEGATE SHELTON: All right, thank you.

CHAIRPERSON FREEMAN: Delegate Jordan.

DELEGATE JORDAN: Madam Chair, I had initially circulated a proposal to amend this section. I just wanted to see if it is appropriate for me to ask a question, first.

CHAIRPERSON FREEMAN: To the Judiciary Committee?

DELEGATE JORDAN: Yes.

CHAIRPERSON FREEMAN: Yes, it is.

DELEGATE JORDAN: As it presently stands, the jury selection process for the District of Columbia is controlled by the Federal District Court for the District of Columbia so the District has no responsibility or no opportunity to engage in the process of selecting jurors for its juries and I do not know how you have dealt with that.

I have asked the General Counsel at some point, how is it dealt with in other state constitutions? Or is it dealt with in other state constitutions? Or is it purely an administrative function or a legislative function? And that is what I am trying to find out because I do not know what would happen in transition.

We could say, well, we will continue to operate the jury system the way it is. Or we will do so and so --

whatever it is, I am just trying to make a point. And I am saying that I do not see where we would take control of our jury selection process.

I don't know if it has come up in the Legislative Branch or any other place so that is why I am just trying to find out.

CHAIRPERSON FREEMAN: I would like the Judiciary Committee to respond.

DELEGATE BLOUNT: I will refer it to the Counsel.

CHAIRPERSON FREEMAN: Thank you, Delegate Blount.

MR. THOMAS: That sort of point is usually not covered in the administration section of the judicial articles. It is not even recommended in the model state constitution of the American Bar Association.

I do not know if it is covered elsewhere. Again, I have not gotten into all of the rest of the articles but I will research and see where it is most appropriate to have it but it is not normally in this particular section.

It is not normally in the judiciary section and in this particular -- in the administration section.

DELEGATE JORDAN: You see, if we pass the judiciary articles -- okay, let's look at it this way. If I make the motion -- I mean -- this is hard. Because, Madam Chair,

the only way I can get it considered on the second reading is to have submitted it and I guess I have submitted it already.

I am just saying that if it is not necessary, then I don't want to do it but if it is necessary, then I would like to do it and I guess we reserve the right here under the second reading to do it since it would be covered under 3 A.

But my concern is -- and I hope the committee understands -- that we do not control our jury selection process today and I do not see anywhere in the Constitution as it stands right now and I just want to make certain that it is handled.

DELEGATE BLOUNT: That could be in the transition section.

CHAIRPERSON FREEMAN: Delegate Jordan, it seems to me that if it is not appropriate in 3.18 then at some point before we adopt the whole article this evening, you could move it as a separate section to avoid the problem of second reading.

DELEGATE JORDAN: Well, then, it would have to be changed because I would not want the administrative director necessarily to do it.

CHAIRPERSON FREEMAN: I see.

DELEGATE JORDAN: I think the language could be much simpler and that is that there would be a system.



But then the question arises, does the court set the system up? Do you create it independent of the commission or what? And you see, because I don't know where it is more appropriate in the Constitution. I think that is one of the details where it is more appropriate for the General Counsel to advise us.

CHAIRPERSON FREEMAN: Could somebody please close the door to the hall? I am having a hard time hearing.

Thank you.

Could the Judiciary Committee please respond and give us your thoughts on this?

DELEGATE BLOUNT: I think that if the delegate were to propose the amendment and then withdraw it, it will have met the requirement that it has been introduced and on second reading, while the counsel has time to research it, it then could be incorporated or taken up, as we find out.

CHAIRPERSON FREEMAN: Okay, thank you, Delegate Blount. I understand the amendment has been circulated so I do think it fulfills the requirements for the second reading, if you would -- this is the Jordan Amendment on juries.

Could you educate the body, Delegate Jordan, as to which amendment precisely?

DELEGATE JORDAN: Well, 3.18 I circulated on

Monday night.

CHAIRPERSON FREEMAN: Did you put it in all the Delegates' boxes?

DELEGATE JORDAN: Yes. Yes.

DELEGATE CORN: It does not have to be circulated to anybody but the Chair before you bring it up.

DELEGATE JORDAN: Madam Chair, let me do just one thing. It says here the substantive committee before the committee reports its article. Now, it did not report it to the substantive committee before they reported the article so if it is appropriate, I would like to introduce it and then withdraw it and that will give me an opportunity to raise it.

CHAIRPERSON FREEMAN: That is appropriate.

DELEGATE JORDAN: So Madam Chair, I would like to rise to offer an amendment to Section 3.18, Administration. which would add a sentence or two sentences to the existing paragraph so that it now would read, "The administrative director shall be responsible for developing a system for the selection of jurors for both grand and petit juries.

"Said system shall provide for maximum participation of citizens on juries and shall ensure that no citizens be denied jury service."

DELEGATE CORN: Second. Second.



[The motion is made and seconded.]

CHAIRPERSON FREEMAN: Is there discussion on this?

Delegate Jordan.

DELEGATE JORDAN: Madam Chair, I would like to withdraw the motion.

DELEGATE KAVENY: Point of order.

DELEGATE CORN: I will not allow that.

DELEGATE KAVENY: Does that accomplish what Delegate Jordan wanted? I mean, the withdrawal as distinguished from either a tabling or a postponement. Does it accomplish what you want to accomplish without undercutting your purpose?

I think it may be necessary to think about that for a moment or he may find himself trapped, without looking into --

DELEGATE CORN: Point of order. As the seconder of the motion, I refuse to have it withdrawn at this time. I see no reason that this cannot be debated and voted on here and now.

CHAIRPERSON FREEMAN: As I understand it, the reason why we do not want to debate it tonight is that we are awaiting advice from our General Counsel, Delegate Corn, and it may not be necessary to add this section.

I would think that it would be sufficient if it

were withdrawn for the purpose of discussing it later. We understand that it has been introduced to this body and that is my ruling.

Delegate Cooper.

DELEGATE COOPER: Madam Chair, I think that Delegate Kameny has raised a very important question because Mr. Jordan may wish to bring this thing up and all of a sudden we may have a lot of Parliamentary gymnastics that allow it not to be brought up, so I think Mr. Kameny's question maybe should be addressed.

CHAIRPERSON FREEMAN: I am just addressing it, Delegate Cooper. Perhaps you were not listening to me.

DELEGATE COOPER: I was talking about Delegate Kameny's point.

CHAIRPERSON FREEMAN: I had just exactly answered that.

DELEGATE COOPER: What was your answer?

CHAIRPERSON FREEMAN: My answer was that it will suffice, that --

DELEGATE COOPER: That it will suffice? I want to know if that is in accordance with our rules.

CHAIRPERSON FREEMAN: Our rules do not address that particular question. The rules say that --

DELEGATE COOPER: What does Robert's say?

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: This debate is totally unnecessary. Rule 3.3(D)(3)(A) provides that an amendment is in order on such reading if it institutes (unclear owing to over-talking by others) -- substance -- for consideration by the substantive committee before that committee reported the argument at the first reading.

So anything that happens on the Floor is totally irrelevant to whether it is introduced or not, but rather, introduced before whether it was produced for the committee.

Or if the requirement is waived by the committee Chair.

So Mr. Blount can waive the requirement at any time and it can go for second reading and we do not have to have a debate on this now?

DELEGATE COOPER: Thank you.

DELEGATE LOVE: Madam Chair --

CHAIRPERSON FREEMAN: A point of order, Delegate Love.

DELEGATE LOVE: I make a motion to table this issue until we get some information from our legal counsel.

CHAIRPERSON FREEMAN: Delegate Love, you are out

of order. Delegate Jordan has withdrawn the motion.

DELEGATE CORN: But I made the second and I refuse to allow it to be withdrawn.

DELEGATE LOVE: The seconder has not accepted it and also, a motion to table is always in order and therefore, I would like to table the discussion --

DELEGATE THOMAS: Kameny seconded it, too.

DELEGATE LOVE: -- until we have the opinion of our counsel --

DELEGATE COOPER: If it was seconded, it belongs to the body and the body must vote on withdrawal.

DELEGATE GARNER: Point of order. Point of order, Madam Chair. What is the ruling of the Chair on whether Delegate Jordan may withdraw his motion without the approval of the seconder?

CHAIRPERSON FREEMAN: He may not. The motion now belongs to the body and that is what is on the floor.

DELEGATE GARNER: And Delegate Love's motion to table -- what has happened to that?

CHAIRPERSON FREEMAN: Delegate Love's motion to table supersedes the motion which is on the floor and that has been seconded and that is what is on the floor and that is, I believe, a non-debateable issue.

Delegate Long.

DELEGATE CORN: I didn't hear a second to Love's motion.

CHAIRPERSON FREEMAN: Delegate Long.

DELEGATE LONG: Point of order --

DELEGATE CORN: [Inaudible.]

CHAIRPERSON FREEMAN: Thank you.

Delegate Long.

DELEGATE LONG: The motion to table would have to be absolutely undebateable. What Delegate Love can propose is essentially a motion to postpone consideration, which is a debateable motion and it is a totally different kind of consideration.

Now, what he is proposing is that the motion be delayed or that the decision be delayed until a time when we get an opinion and we can deal with that whenever we want to do that, or whether we want to do that or not, or how long we want to delay or how much time it is going to take and so on and so forth.

CHAIRPERSON FREEMAN: Thank you, Delegate Long.

Delegate Love, would you be willing to simply withdraw your motion to table?

DELEGATE LOVE: All right, I will withdraw my

motion.

CHAIRPERSON FREEMAN: Will the seconder of the motion to table withdraw? Whoever made the second, if there was a second?

VOICE: There was a second and I will withdraw it.

CHAIRPERSON FREEMAN: Thank you.

DELEGATE JORDAN: Madam Chair, point of order.

CHAIRPERSON FREEMAN: Delegate Jordan.

DELEGATE JORDAN: Madam Chair, there is also a provision here to refer an issue to a committee and that is Section 4.1 (K) and is it appropriate, then, that this be referred to the committee and the committee can bring it back?

DELEGATE CORN: When?

DELEGATE JORDAN: Well, at some point, then, whenever they chose to bring it back, but I would not lose anything or at least that is my understanding, because this is not a motion to table so it would not kill it.

DELEGATE CORN: What about postponing consideration?

DELEGATE JORDAN: Well, there's two ways to do it. We could postpone for consideration to a date and time certain.

DELEGATE : That's right.

DELEGATE JORDAN: Or we could refer it back to the committee. I do not know what the date and time certain

would be.

CHAIRPERSON FREEMAN: It seems to me that at this point there is an even easier procedure which is that/<sup>if</sup> Delegate Blount is willing to waive the requirement of the Jordan Amendment having been submitted to the committee, then it can be brought before the body again at the second reading.

DELEGATE BLOUNT: I will agree to that and I would also like to add that I think all the delegates here have that understanding and at some point we have to take somebody's word that we are going to do certain things and there is no question that the item, upon the advice of the Counsel, will come forward, you know, if that is the wish of the body.

DELEGATE COOPER: A point of clarification.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: Before putting anything to a vote, I think we should bear in mind that there are only half of us here. Now, the other half just may not have that understanding.

CHAIRPERSON FREEMAN: Delegate Cooper, that is totally irrelevant. What is relevant is whether the Chair of the committee is willing to waive the requirement. That is the issue.

DELEGATE GARNER: Madam Chair --



CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: As I understand it, the motion on the floor is the motion by Delegate Jordan and that it would be withdrawn except for the fact that the seconder will not permit it. Is that correct?

CHAIRPERSON FREEMAN: That is correct.

DELEGATE GARNER: I move to table absolutely the motion on the floor to achieve the objectives of Delegate Jordan.

DELEGATE BLOUNT: My only objection, Madam Chairman, is that I would like to know how that affects what we do here. I was hoping that we could actually finish tonight. Would that affect --

SEVERAL VOICES: No.

DELEGATE CORN: There is another way to do it.

DELEGATE LOVE: Madam Chairman, would you please establish order?

CHAIRPERSON FREEMAN: May I have order in this room? [Rapping gavel.] I am going to ask Delegate Corn to please withdraw the second.

DELEGATE CORN: Madam Chair, there is another way to deal with this and that is --

DELEGATE COATES : Point of procedure. Point of



procedure.

CHAIRPERSON FREEMAN: I am trying to approach it in the way that I am trying to approach it. Would you please withdraw your second, Delegate Corn.

DELEGATE COATES: Point of procedure, Madam Chair.

CHAIRPERSON FREEMAN: Delegate Coates.

DELEGATE COATES: Once the matter has been properly put before this body and discussed, it is the property of the body. It does not require the permission of either the mover or the seconder to dispose of it.

If Delegate Corn persists in her position, she absolutely has no standing with respect to our disposition of the matter once it has been properly put before this body in discussion.

DELEGATE GARNER: Madam Chair, my motion to table is on the floor. It has been seconded. It is not debateable. And it achieves the objective of Delegate Jordan.

CHAIRPERSON FREEMAN: Thank you, Delegate Garner.  
Delegate Eichhorn.

VOICE: Who made the second?

VOICE: I didn't hear a second.

[Side conversations.]

VOICE: That motion did not have a second.

DELEGATE EICHHORN: No, no, there was a second, I heard it. Delegate Kameny seconded it and there was one other.

CHAIRPERSON FREEMAN: Delegate Eichhorn --

DELEGATE EICHHORN: Does that mean that all three people have to withdraw?

CHAIRPERSON FREEMAN: It means that once the motion has been made and it has been seconded, that it then belongs to the body.

DELEGATE LOVE: Madam Chair, point of order.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE CORN: I withdraw the second.

DELEGATE LOVE: If that is true, then my motion to postpone consideration is in order and I would like to have a vote on my motion to postpone consideration and I will say, until Wednesday.

DELEGATE BLOUNT: The delegate has agreed to withdraw the motion. I will point that out, Madam Chair.

CHAIRPERSON FREEMAN: I heard that --

DELEGATE KAMENY: Madam Chair.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: I think that a definitive ruling by the Chair that covers fully the situation at hand

is extremely unlikely successfully if at all to be appealed by this body. I suggest, therefore, that you make a definitive ruling without hesitation and without fear or reticence or reluctance, which covers all the ramifications involved, including the future action by the committee.

I suspect we will all abide by it and that will end this pointless, futile discussion.

DELEGATE CORN: Very good.

CHAIRPERSON FREEMAN: Thank you, Delegate Kameny. I have actually been trying to do that for some time but I have had so many points of order to which I have had to respond.

My ruling is the following, that the only motion on the floor at this moment is the motion to adopt 3.18 and that the Jordan Amendment will be considered by this body at a future date in a second reading and that it will be in order at that time because it has been circulated to the delegates and the requirement of it having gone before the committee will be waived by Delegate Blount.

Delegate Garner.

DELEGATE GARNER: I call the question.

[The question is called.]

DELEGATE BLOUNT: Second.

[There are several seconds.]

VOICE: What is the question?

CHAIRPERSON FREEMAN: The motion on the Floor was 3.18. Now the motion on the floor is to close debate on Section 3.18.

DELEGATE BRIAN MOORE: Point of information.

CHAIRPERSON FREEMAN: Delegate Moore.

DELEGATE BRIAN MOORE: It appears that this would be like considering a minority report. Is it your understanding that that was enough to be able to bring it up again on the second reading? Or would I have to bring it up now on the floor?

CHAIRPERSON FREEMAN: Did you submit this to the committee?

DELEGATE BRIAN MOORE: Yes.

CHAIRPERSON FREEMAN: Then you will be able to raise it on a second reading if you so choose, Delegate Moore.

The motion on the floor, Delegates, is to close debate on 3.18.

All those in favor of closing debate on 3.18, please say aye.

[There is a chorus of ayes.]

All those opposed?

SEVERAL VOICES: Delegate Corn is smoking.

CHAIRPERSON FREEMAN: Delegate Corn, you are smoking in the Convention Hall and that is totally out of order.

[Side comments.]

CHAIRPERSON FREEMAN: [Rapping gavel] Delegates.

We are voting on 3.18. The question has been called on 3.18. All those in favor of adopting 3.18, please say aye.

[There is a chorus of ayes.]

All those opposed?

[There is no opposition.]

Abstentions.

[No abstentions. Carried unanimously.]

All right, 3.18 is adopted.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of Section 3.19, Financing.

DELEGATE CORN: Second.

[Motion made and seconded.]

CHAIRPERSON FREEMAN: Is there discussion?

Delegate Garner.

DELEGATE GARNER: I move that this section be deleted because it will be covered appropriately in the

article on Finance. And I hope that this does not call for a big discussion, but that we just decide this appropriately one way or the other, that we either leave it here or move it and put it one place or the other.

[A motion is made. There is a second.]

CHAIRPERSON FREEMAN: All right, it has been moved and seconded to delete section 3.19. Is there discussion on that? Delegate Shelton.

DELEGATE SHELTON: Yes. We should go to the substance of the context established here and I would like to know the rationale in the Constitution --

[Much side conversation.]

CHAIRPERSON FREEMAN: Excuse me, Delegate Shelton, I am having a hard time hearing. Delegate Kameny, Delegate Corn, Delegates Robinson, Nixon, Delegates Jordan and Cooper, could you please be quiet? Delegate Shelton has the floor.

DELEGATE SHELTON: I would like to know a little bit more about the reasons behind this thinking. In other parts of the Constitution we are calling for a strong government and I am just wondering why there were such restrictions placed on this and I would like to have a little bit of background as to why the chief executive has really no say in the

review of the judiciary budget.

CHAIRPERSON FREEMAN: Will the Judiciary Committee please respond to Delegate Shelton's question.

DELEGATE EICHHORN: The provision is actually drafted with benefit to the Governor in the sense that it is traditional that the judiciary budget -- the judiciary being an independent body -- are not amended or vetoed by the Governor but go directly to the legislature with the Governor's recommendation.

What we have done here additionally, however, is to protect the Governor from being placed in a position where by the judiciary asks for a large increase in its budget and the Governor, to balance the budget, must then propose tax increases when he or she in fact opposes the increase.

So the Governor may propose a budget which only asks for a tax increase that covers that additional judicial cost which the Governor supports. The legislature, which is the determining body, if it chooses to increase the budget to the judiciary beyond that point, must also find the money to do that to balance the budget, so that is in line with a strong executive.

DELEGATE SHELTON: That goes right to the heart of my question about the budget. Thank you very much.



DELEGATE EICHHORN: I believe that it is appropriate to leave this in the judicial article because the budget on the judiciary is traditionally handled in a way that differs from other budgets and I think that it is appropriate to leave it here. The committee gave considerable debate to this issue and felt strongly about this point of view.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: Yes, I wanted to also, for Delegate Shelton, point out that this is consistent and compatible with the position of a strong executive and in the executive branch it was indicated that with respect to this the judiciary and the legislature will be reserved with regard to the Governor.

What we are saying, however, is the Governor will have what is tantamount to an anti-deficiency act on this because the Governor must say that there are revenues which balance the proposed budget, including those new branches.

And as long as it is within those confines, the Governor will not be making any additions or deletions to the budget of either the legislature or the judiciary.

So it is consistent, compatible and historically and traditionally respectful. There really is no reason to omit it because there is no harm in it.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: I would like to speak in favor of the Garner Amendment to strike; I do understand Ms. Eichhorn's comments on the amendment inasmuch as the judicial system is something special, unique and separate and apart.

I am quite aware of the fact that it is compatible with that section that appears in the executive. However, I am not so sure that the Committee on the Judiciary or the Committee on the Executive or the Committee on the Legislature have an overriding knowledge of the total fiscal plan that has been set forth by the Committee on Finance and Taxation of which I am a member and of which Delegate Garner, who made the amendment, is a member.

And I think that if we were to adopt this language, without consideration of the whole, that we may be remiss and we may regret what we have done because we may come to another article later on that we will have to reformulate a tremendous amount.

Now, a lot of the committee members are here and present and I would hope that, as well as with the committee chair, that they would speak to this because I think it is a very, very, very urgent matter -- especially in light of the current times. It is extremely urgent to have sound financial

planning and sound budgetary submission in handling measures be in this constitution and I do not think that the article or the section set forth here in the article by the judiciary is consistent and I do think that all of the budgetary concerns and matters should appear in a single section, under the Constitution.

And I would hope that all of the members here tonight would give that good consideration. Thank you.

DELEGATE LOVE: Madam Chair --

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: Madam Chair, it appears to me that there is a slight problem here where we have two committee jurisdictions and it seems to me that the easiest way to do this would be to refer it back to those committees for them to meet in joint session and to come up with a proposal.

Therefore, I would like to move that the section on financing be sent back to the joint committee meeting between finance and judicial for them to work out some sort of agreed language, rather than have us try and do it here on the floor with folks from various committees speaking up all at once.

[A motion is made.]

CHAIRPERSON FREEMAN: Is that motion seconded?

DELEGATE GARNER: Point of order.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I do not believe you can refer a motion to delete. The motion on the floor is my motion to delete.

DELEGATE LOVE: May I make a substitute motion?

DELEGATE GARNER: Madam Chair, I withdraw my motion and I would urge delegates to support the motion on the floor. The substance is not at issue. The question is whether it belongs in the Constitution and that can be solved by our wonderful Committee on Style and Drafting.

CHAIRPERSON FREEMAN: Excuse me, I did not hear the first part of what you were saying, Delegate Garner. I am very sorry. You withdrew your motion. I understand that. Then what was your suggestion?

DELEGATE GARNER: I withdrew my motion to delete and I urged the delegates to support this section.

CHAIRPERSON FREEMAN: Thank you.

DELEGATE SHELTON: Point of information.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I am not quite clear as to the details of this subject. All I know is that there is a committee on taxation and they have some concern. I think it

would be helpful for us to understand just what it is that the committee is concerned with because the delegates may be instructive to the Committee on Taxation so that they may in fact go back and look at their draft so I think we need a little guidance as to what possibly may come of it.

CHAIRPERSON FREEMAN: Delegate Coates.

DELEGATE COATES: Thank you, Madam Chair. I would like first -- if the Chair permits leave -- that the Committee on Finance and Tax provides in its article concerning the court system, concern for the separation of power, providing with respect thereto that the court system can make projection of its spending in the budget which it submits to the government.

However, in that article, it allows that the Governor may adjust the funding level or establish in his own discretion a funding level which either increases or decreases the funding level required by the submission in the court system; which, in effect, is to say that he is not bound by the funding level established in the projection from the chief judge.

The question that I have is to inquire as to whether the article now before us in the report from the judiciary allows the Governor to adjust the funding level,